IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 573 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDKUMAR N TRIVEDI

Versus

DIRECTOR

Appearance:

MRS KETTY A MEHTA for Petitioner

MR RJ OZA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/12/1999

ORAL JUDGEMENT

This petition has been filed under Article 226 of the Constitution of India challenging the judgement and order recorded by the Learned Gujarat Civil Services Tribunal in Appeal No. 470 of 1987 dated 9.12.87 under which the Learned Tribunal dismissed the appeal of the present petitioner who was removed from service by the Director, Social Welfare Department, State of Gujarat by

order dated 23.11.87.

2. The short facts of the case are as under:-

3. That the petitioner was entitled to Leave Travel Concession Benefit and he was also entitled to have the cash amount in lieu of the actual travelling. It seems that he submitted his claim before the Director of Social Welfare Department on 18.8.84 for Cash LTC for the block years 1984-87. For the said purpose he showed that there were four members in his family including himself, his father, his mother and his wife. The said claim shows at no.4 "V.A.Trivedi", the cash option also indicated that the said four persons being the members of the family of the petitioner were actually dependent upon the petitioner.

4. Thereafter, the department came to know that the petitioner had not married at all and yet he had claimed Cash LTC in respect of his wife V.A.Trivedi. Therefore he was served with a chargesheet showing that he had wrongly taken benefit of Cash LTC for his wife though he had not married. The petitioner was heard at the inquiry and at conclusion of the inquiry a report was submitted showing that the petitioner had actually not married at the time when he made the said claim for encashment of LTC and therefore he recovered the said amount of Rs.150/- in the name of his wife wrongly and illegally and therefore he committed misconduct. Thereafter, the petitioner was heard in person and after he was heard in person, the Director, Social Welfare Department passed impugned order dated 23.11.87 removing the petitioner from the employment.

5. Feeling aggrieved by the said order of the Director, Social Welfare Department, the petitioner preferred appeal before the Learned Civil Services Tribunal at Gandhinagar being Appeal No. 470/87. It seems that the petitioner also applied for the stay of implementation of the impugned order and his removal dated 23.11.87 and that prayer was rejected by the Learned Tribunal. At the same time, the Learned Tribunal passed an order that it was directed that an appeal should be fixed peremptorily for final hearing regarding the limited question of quantum of penalty on 3.12.87.

6. Actually, the matter was heard and the Learned Tribunal came to a decision that the punishment of removal is not very harsh considering the misconduct committed by the petitioner. Therefore, the appeal was dismissed on 9.12.87 by the Learned Tribunal.

7. Feeling aggrieved by the said judgement and order of the Learned Tribunal, the petitioner has preferred this petition before this Court. It has been contended here that the petitioner was not supplied with a copy of the report of the Inquiry authority. It has also been contended that considering the charge levelled against the petitioner, the punishment of removal is very harsh. On these two considerations, it has been prayed that the present petition be allowed and the impugned order of removal of the petitioner from Government service be quashed and set aside and the petitioner be ordered to be reinstated on his original post in government service.

8. I have heard Mrs.Ketty Mehta, Ld. Advocate for the petitioner and Ms.Katha Gajjar, Ld. AGP for the State.

9. It is an admitted position that the petitioner was serving as English Typist cum Clerk at the relevant point of time. It is also admitted position that he preferred a claim for Cash Encashment of LTC in a sum of Rs.150/- in the name of his wife. It is also an admitted fact that the petitioner had not married at all at the relevant point of time. therefore, it becomes a admitted fact that the petitioner made a wrong and false claim for encashment of LTC in a sum of Rs.150/- which was credited in his P.F. Account.

10. So the facts are undisputed and therefore it is not necessary to touch them in details. The defence raised by the petitioner was that the petitioner was betrothal at the time when the claim was made and therefore he was under the impression that his fiancee was his wife and therefore he was entitled to claim encashment of LTC in the sum of Rs.150/- for his fiancee. Now the said fact also does not appear to be true. If we refer to his claim made for the encashment for his wife, it is placed at Schedule 1 at Pg. 15, where he has shown "V.A.Trivedi" as his wife. Then he has produced Invitation Card of his marriage wherein the name of his wife has been shown as Darshana. Naturally her name starts with "D" and not with "V". This fact has not been properly explained at any point of time. Even this fact was put to Mrs.Ketty Mehta during the course of her argument.

11. Another aspect of the case is that the petitioner in his explanation dated 4.6.1985 had stated that he was betrothed at Rajkot according to Hindu Ceremony. Now again he stands falsified by that invitation which shows

that he married at Palitana in Bhavnagar District.

12. Apart from the aforesaid facts, it is to be considered that the petitioner had shown V.A.Trivedi as his wife, over and above the said position, the petitioner had also made it clear in his option form at page 15 that the persons name in the option form belong to his family and that they are dependent upon him. Now since the petitioner had not married V.A.Trivedi and thus at that point of time she did not become a member of his family. There is nothing on record to show that she was at that point of time staying with the petitioner and therefore she could not be treated to be a dependent of the petitioner. This shows that even this statement of facts made by the petitioner was false to the knowledge of the petitioner.

13. Under the circumstances, it is apparently clear that the petitioner made a false claim for encashment of LTC in a sum of Rs.150/- stating that he had his wife in his family and therefore he was entitled to claim encashment of LTC for his wife in a sum of Rs.150/-. Therefore, there was ample evidence before the Inquiry Authority as well as before the Disciplinary Authority to hold the petitioner to be guilty of the charge levelled against him.

14. The Learned advocate for the petitioner has very vehemently contended that the petitioner was not provided with copy of the report of the Inquiry Authority in accordance with the rules and therefore the entire inquiry and the orders subsequent thereto stand vitiated for the said ommission. The Learned Advocate for the petitioner refers to the provisions made under Sub-Rule 4 of Rule 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. Subclause (a) of clause (i) of sub-rule 4 of Rule 10 says that the report of the Inquiry Authority is required to be furnished to the delinquent. There is no dispute about the same. However, it appears that there is a substantial amendment in the said rule. The respondents have produced at Page 50 the amended rules. The amendment took place in 1986 by the Gujarat Civil Services (Discipline and Appeal) (First Amendment) Rules, 1986. Rule 3 of the amended rules says that sub-rule 4 of rule 10 of 1971 rules has been substantially changed and amended and at present sub-rule 4 of rule 10 of 1971 Rules stands as follows:-

"4. If the Disciplinary Authority having regard to its finding on all or any of the articles of charge & on the basis of the evidence

adduced during the inquiry is of that opinion that any of the penalties specified in items (4) to (8) of Rule 6 should be imposed on the Govt. servant, it shall make an order imposing such penalty and its shall not be necessary to give the Government Servant any opportunity of making representation on the penalty to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and the advice shall be taken into consideration before making an order imposing any such penalty as may be imposed on the Government servant".

Now the aforesaid amended Sub-rule 4 does not provide for the procedure which was earlier mentioned and referred to hereinabove. In other words, the requirement of supplying the copy of the report of the Inquiry Authority has been totally done away with by this amendment of 1986. Therefore under the amended rules, it was not necessary for the department to supply copy of the report of the Inquiry Authority to the petitioner.

15. It is to be considered that the impugned order of removal of the petitioner has been passed on 23.11.87 and the aforesaid rules have been brought into force in 1986. Therefore, at the time when the impugned order was passed against the petitioner, the said amended rules were already in force and therefore it was not necessary for the department to supply copy of the report of the inquiry authority to the petitioner.

16. Learned Advocate for the petitioner has argued that the inquiry has been concluded earlier before the said rules came into force and therefore it was necessary for the department to supply copy of the report of the Inquiry Authority. However, it seems that the petitioner was heard at last finally on 2nd of November, 1987 as can be gathered from the impugned order dated 23.11.87. Therefore on that date the amended rule was in force and therefore also it was not necessary to supply copy of the report of the Inquiry Authority to the petitioner.

17. Then it is also required to be considered that the appeal of the petitioner was admitted by the Learned Tribunal for a limited purpose of quantum of punishment only. In that view of the matter, the Learned Tribunal was naturally not required to consider this aspect of the

case. It therefore cannot be said that the Learned Tribunal has not properly considered the case of the petitioner in the said appeal in as much as there is no reference to the aforesaid argument of non-supply of copy of the report of the Inquiry Authority.

18. The Learned Advocate for the petitioner has vehemently contended that in view of the famous case of Ramzankhan, it was necessary for the department to supply copy of the report of the inquiry Authority. In the case of Union of India Vs. Mohd. Ramzan Khan, reported in (1991) 1 SCC 588, it has been positively held that in quasi-judicial proceedings, non-supply of adverse material, to the affected person but supply thereof to the authority taking decision against him on that basis constituted violation of rules of natural justice. In other words, it has been considered in this judgement that whatever material considered by the Disciplinary Authority must be made known to the delinquent. That, Inquiry Officer's report is being considered by the Disciplinary Authority behind the back of the delinquent and therefore that omission violates the rules of natural justice. However, it has been positively referred in the decision that this principle shall apply prospectively.

In Para 17, the Honorable Apex Court has very positively observed that the position in unequivocal terms as follows:-

"Therefore, the conclusion to the contrary reached by any two Judge Bench in this Court will also not longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

This judgement was pronounced on 20.11.90. Whereas the order of punishment impugned in this petition was passed in 1987. The impugned order was passed much before the pronouncement of the said judgement. Therefore, the principle enunciated in the said judgement will not hold field in the facts of the present case.

19. In the case of Food Corporation of India Vs. Narendra Kumar Jain reported in 1993 2 SCC 400, it has been again held that it was brought to the notice of the High Court that the law laid down by this Court in Ramzan Khan case was operative prospectively and the order dismissing the respondent being prior in date to the judgement in Mohd. Ramzan case he was not entitled to take advantage of the law laid down in the said

judgement. Yet the High Court went other way and held that the petitioner/delinquent was entitled to the copy of the report of the Inquiry Authority. Therefore the Hon'ble Supreme Court observed as under:-

> "We do not agree with the reasoning of the High Court. This Court having specifically made the ratio in Mohd. Ramzan case operate prospectively there was no scope for the High Court to have applied the same to the facts of the present case."

On the said strength, the appeal was allowed and the judgement of the High Court was set aside. So it is made again clear that the aforesaid principle was prospective in effect and it could not be applied retrospectively.

20. Once the said principle enunciated in Ramzankhan's case is considered to be prospective in effect then it is very clear, as said above, that the decision arrived at in the present case i.e. 23rd November 1987 was much earlier then the decision enunciated in Ramzan Khan's case and therefore the present case would not be governed by the said principle of Ramzan Khan's case. In other words principle of Ramzan Khan's case cannot be pressed into service on the facts of the present case.

21. Once the said principle is not applied to the facts of the present case, then it is very clear that at the relevant date, the rules did not require to supply of copy of the report of the Inquiry Authority to the delinquent and therefore non-supply of the said copies would not vitiate the proceedings. Even otherwise, it is very clear that the inquiry against the petitioner did not involve complicated questions of facts and law. There was only one point that he was not married and yet he claimed and obtained encashment of LTC in a sum of Rs.150/- for his wife on two false statements. The first was that he had married at the time when the claim was made and the second was that the wife was dependant upon him. On these 2 false statements, the petitioner claimed and obtained encashment of LTC. The facts were undisputed. He was unmarried and his so-called fiancee was not dependent upon him. Therefore, both the averments and statements of facts were not only false but were false to the knowledge and notice of the petitioner. No other fact was involved in the case at the inquiry. Therefore, even otherwise no prejudice has been caused to the petitioner by not supplying him copy of the report of

the Inquiry Authority. Therefore, non-supply of copies of the report of the Inquiry Authority did not adversely affect the interest of the petitioner and therefore also the inquiry proceedings cannot be said to be vitiated.

22. Another contention is that the punishment awarded is too harsh. Now, it is a fact that the matter involves a sum of Rs.150/-. It is government money and it has been wrongly claimed and collected by a government servant. Therefore, it would amount to a high degree of misconduct on part of the petitioner. It would be seen that the petitioner has not been dismissed but he has been removed from service. The removal from service would not stand as obstacle in getting a fresh appointment in Government. Therefore the highest degree of punishment has not been awarded.

23. The Learned Tribunal has considered the question of quantum of punishment at length and there also, the Learned Tribunal has found that the punishment is not too harsh. Even otherwise, this Court while exercising the powers and jurisdiction under Article 226 and 227 of the Constitution of India would be normally slow in interfering with the quantum of punishment awarded by the Disciplinary Authority. Here, the Disciplinary Authority has awarded a particular punishment and it has been upheld in appeal before the Learned Tribunal. Therefore, the petitioner had atleast 2 opportunities to make his submissions on the point of quantum of punishment. Therefore also, this third round should not go to the rescue of the petitioner.

24. Even otherwise, looking to the manner in which the amount has been claimed and collected it is very clear that it is a misconduct of grave nature and therefore the department could not have taken it lightly and no leniency can be extended to him. As stated above, the petitioner had shown V.A.Trivedi as his wife, the Invitation card shows that he married to Darshana whose name does not start with "V". Then Para 2 of the judgement of the Learned Tribunal refers to the statement of the petitioner wherein he had stated that he was betrothed at Rajkot whereas the invitation card shows that he married in Palitana in Bhavnagar District. It is therefore doubtful whether even his statement with respect to his betrothal was really true. We are not concerned with that statement at this stage in this petition.

25. Anyway, the punishment cannot be treated to be too harsh so as to shock the conscience of the Court with a

view to interfere with the said quantum of punishment at this level in an extra-ordinary jurisdiction under article 226 & 227 of the Constitution of India.

26. Therefore, it is clear that on one hand, the proceedings before the Inquiry Authority and Disciplinary Authority did not stand vitiated for non-supply of copy of the report of the Inquiry Authority. On the other hand, the punishment awarded is not found to be too harsh so as to shock the conscience of the Court and so as to interfere at this level in an extra ordinary jurisdiction under article 226 & 227 of the Constitution of India.

27. No other point has been raised. This shows that the petition is without any merits and deserves to be dismissed. The petition is accordingly ordered to be dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no orders as to costs.

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jitu-sadhwani